

COUNTY OF GILLESPIE



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OPEN RECORDS DIVISION

Fredericksburg, Texas 78624

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OPINION COMMITTEE

March 30, 2006

RQ-0473-GA

The Honorable Greg Abbott
Attorney General of Texas
PO Box 12548
Austin, Texas 78711-2548

FILE # ML-44722-06

I.D. # 44722

Attention: Ms. Nancy S. Fuller, Chair
Opinion Committee

Re: Whether the Gillespie County Attorney may make expenditures from the hot check fund to pay for a sponsorship of a children's book?

Dear Ladies and Gentlemen:

Your advice is requested concerning the following question:

May the Gillespie County Attorney use moneys from the Gillespie County Hot Check Department "hot check" fund established under TEX. CODE CRIM. PROC. ANN. Article 102.007 (Vernon 2005) to pay for a sponsorship in a children's book promoting strong family values and citizen values to young people titled "My Favorite Book"?

Please find attached a memorandum brief. Your cooperation in this matter is greatly appreciated. Should you have any questions or require further information, please do not hesitate to call.

Sincerely yours,

Tamara Y. S. Keener
Gillespie County Attorney

Attachment
Certified Mail, Return Receipt Requested

Memorandum Brief

Question Presented:

May the Gillespie County Attorney use moneys from the Gillespie County Hot Check Department "hot check" fund established under TEX. CODE CRIM. PROC. ANN. Article 102.007 (Vernon 2005) to pay for a sponsorship in a children's book promoting strong family values and citizen values to young people titled "My Favorite Book"?

Introduction:

When a county attorney collects and processes dishonored or forged checks TEX. CODE CRIM. PROC. ANN. Article 102.007 (Vernon 2005) authorizes collection of a fee,¹ which is payable by any party who is a party to the offense. These fees are deposited into a fund commonly referred to as the "hot check" fund. Article 102.007(f) states that:

Fees collected under Subsection (c) if this article shall be deposited in the county treasury in a special fund to be administered by the county attorney, district attorney, or criminal district attorney. Expenditures from this fund shall be at the sole discretion of the attorney and may be used only to defray the salaries and expenses of the prosecutor's office, but in no event may the county attorney, district attorney, or criminal district attorney supplement his or her own salary from this fund.

The hot check fund has been the subject to many Attorney General Opinions. The attorney administering the fund need not obtain the approval of the commissioner court prior to making expenditures from the fund. See Op. Tex. Atty. Gen. No. JM-313 (1985). But the county attorney must comply with the accounting and control procedures prescribed by the county auditor in administering the fund. See Op. Tex. Atty. Gen. Nos. JM-967 (1988), JM-632 (1987), MW-584 (1982), and MW-188 (1980). This includes requiring the county attorney to provide receipts for purchases of goods and services from the "hot check" fund. See Op. Atty. Gen. No. JC-0084 (1999).

¹ TEX. CODE CRIM. PROC ANN. Article 102.007(c) provides that the amount of the fee may not exceed:

- (1) \$10 if the face amount of the check or sight order does not exceed \$10;
- (2) \$15 if the face amount of the check or sight order is greater than \$10 but does not exceed \$100;
- (3) \$30 if the face amount of the check or sight order is greater than \$100 but does not exceed \$300;
- (4) \$50 if the face amount of the check or sight order is greater than \$300 but does not exceed \$500; and
- (5) \$75 if the face amount of the check or sight order is greater than \$500.

Discussion:

On October 1, 2005 the Gillespie County Attorney received an invoice for \$782.00, for a sponsorship in the Ambassador Company's "My Favorite Book." This book on citizenship and how to be your best is distributed to all first grade students in Gillespie County free of charge. The County Attorney submitted the invoice to be paid out of the "Hot Check Fund" account through the Gillespie County Auditor's office. On October 10, 2005, the Gillespie County Auditor denied payment stating that this expenditure was not directly related to the official duties and functions of the county attorney's office. See Op. Tex. Atty. Gen. No. JM-313 (1985)

The duties of the Gillespie County Attorney include representing the state in all misdemeanor cases and to advise the County in civil matters. Article 2.01 of the Code of Criminal Procedure states that "it shall be the primary duty of all prosecuting attorneys...not to convict, but see that justice is done." TEX. CODE CRIM. PROC. ANN. Article 2.01 (Vernon 2005) It is because of this duty that the Gillespie County Attorney has provided many informational packets to the public regarding hot checks, victims' rights, services for residents of Gillespie County, and Driving While Intoxicated cases. Videos and posters have also been purchased and distributed to help stop crime before it happens or to help victims after a crime has been committed. The sponsorship in "My Favorite Book" is one way of which the county attorney can get her message² to young children as well as their families.

Subsection (f) of 102.007 clearly states, "Expenditures from this fund shall be at the sole discretion of the attorney." The only limitation of expenditures from the "hot check" fund is that "in no event may the county attorney... supplement his or her own salary from this fund." TEX. CODE CRIM. PROC. ANN. Article 102.007 (Vernon 2005) The Gillespie County Attorney has no relation to the Ambassador Company and therefore the payment of the invoice did not supplement her own salary.

² The Table of Contents is as follows:

Chapter One: Good Manners – A story about how showing good manners means having respect for others.

Chapter Two: Making the World Better – A story about how important it is to be responsible and how we can make the world better by doing our chores.

Chapter Three: The Hero – A story about being brave and knowing what to do in a case of an emergency.

Chapter Four: Our Community – A section about the importance of our community and all the people within it.

Chapter Five: Friends – A story about the meaning of true friendship.

Chapter Six: The Family – A story about the importance of our families and our traditions.

Chapter Seven: How I Got in Trouble – A story about how following the rules can keep us safe.

Chapter Eight: Be Good to Your Body – A poem about keeping our bodies healthy.

Chapter Nine: Parent Guide – A letter to parents and a family discussion guide to help the whole family more fully enjoy the meaning of each story.

Conclusion:

The Gillespie County Attorney respectfully requests that you issue an opinion deciding whether or not the Gillespie County Attorney may use moneys from the Gillespie County Hot Check Department "hot check" fund established under TEX. CODE CRIM. PROC. ANN. Article 102.007 (Vernon 2005) to pay for a sponsorship in a children's book promoting strong family values and citizen values to young people titled "*My Favorite Book.*"